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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/587,944

10/17/2006

Migaku Suzuki

128971

6673

25944 7590 08/15/2008

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EXAMINER

MARCETICH, ADAM M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

08/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/587,944	<b>Applicant(s)</b> SUZUKI ET AL.	
	<b>Examiner</b> Adam Marcetich	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 7, 19, 20, 24, 26-30, 32 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9, 11-18, 21-23, 25 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02 August 2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Election/Restrictions***

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1. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species A-H are as follows:

- ❖ Figs. 6A-6D, depicting different arrangements of a bag and absorbers
- ❖ Figs. 11A-11F, depicting different arrangements of a convexity containing sheet member and contact sheet
- ❖ Figs. 13A-13F, depicting leak preventers having different shapes
- ❖ Figs. 14A-14H, depicting leak preventers having different shapes
- ❖ Figs. 15A-15C, depicting different arrangements of a fitting member within a leak preventer
- ❖ Figs. 16A-16C, depicting an absorbent article having different arrangements of a detachable member
- ❖ Figs. 19A-19C, depicting an absorbent article having different arrangements of a feces-receiving member

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims

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subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: 1.

Where the group of inventions is claimed in one and the same international application, the requirement for unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among the inventions involving one or more of the same or corresponding special technical features. The expression **“special technical features”** shall mean those technical features that define a contribution which each of the claimed inventions considered as a whole, **makes over the prior art.** The inventions listed as Groups A-H do not relate to a single general inventive concept under PCT rule 13.1 because, under PCT Rule 13.2, although they share the special technical feature, this special technical feature does not define a contribution over the prior art for the following reasons: For example Berringan et al. (US Patent 5,256,466) discloses an absorbent article having multiple layers in different arrangements. Therefore, providing an absorbent article having differently arranged layers and

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absorbent components does not provide a contribution over the prior art, and no single general inventive concept exists. Therefore the restriction is appropriate.

2. Applicant's election with traverse of claims 1-6, 8, 9, 11-18, 21-23, 25 and 31 in the reply filed on 8 May 2008 is acknowledged. Applicants assert that claims 1-33 share common subject matter and, therefore, a priori unity of invention exists between all the claims. Applicant asserts that U.S. Patent No. 5,256,466 to Berringan et al. does not establish that each and every element of the subject matter that is common to claims 1-33 is known in the prior art, and therefore unity of invention exists.

3. This is not found persuasive because the requirement for restriction is not based on anticipation or obviousness. In other words, it is not required that a single reference teach all limitations, only that a common limitation shared by species be known in the prior art as demonstrated by Berringan.

The requirement is still deemed proper and is therefore made FINAL. Claims 1-6, 8, 9, 11-18, 21-23, 25 and 31 are examined on the merits.

**Claim Rejections - 35 USC § 112**

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4-6 and 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. Claims 4-6 and 11-14 recite the limitation "the absorbers." There is insufficient antecedent basis for this limitation in the claim, since claim 1 only refers to "an absorber" in the singular. To clarify, claim 1 recites a single absorber, while claims 4-6 and 11-14 recite a plurality of absorbers. Appropriate correction is required.

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### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-6, 9, 11-14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Ito et al. (US Patent 4,364,992).

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9. Regarding claim 1, Ito discloses an absorbent article, including:

a leak preventer having a sheet and two bags provided separately on right and left of an upper side of the sheet (col. 3, lines 19-19, 24-30, Figs. 4-7, liquid-impermeable sheet 5 having sheet and two bags on left and right),

each of the two bags having an opening facing with each other (Figs. 4-7, openings of liquid-impermeable sheet 5 facing each other); and

an absorber having at least one layer and containing a super absorbent polymer and capable of absorbing a body fluid, provided in each of the two bags (col. 4, lines 32-38, Figs. 4-7, second absorbing layer 7 containing super water-absorbing polymer).

Regarding the limitation of an absorber provided in each of two bags, absorbent layer 7

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of Ito extends within both sides of sheet 5, and is considered by the examiner to be located in "each" of the bags, meeting the limitations of the claim.

10. Regarding claim 2, Ito discloses an absorbent article in which the two bags are symmetrical (Figs. 4-7, liquid-impermeable sheet 5 depicted as symmetrical).

11. Regarding claim 3, Ito discloses an absorbent article further including a connecting absorber that connects the absorbers provided in each of the two bags (col. 3, lines 31-35, Figs. 4-7, first absorbing layer 6 adjacent second absorbing layer 7).

12. Regarding claim 4, Ito discloses an absorbent article in which the absorbers are sheet absorbers (Figs. 4-7, first and second absorbing layers 6 and 7 formed as sheets).

13. Regarding claim 5, Ito discloses an absorbent article in which the sheet absorbers contain 50 wt% or more of the super absorbent polymer:

SAP basis weight = 20-100 g/m<sup>2</sup> (col. 4, lines 63-65, SAP scattered on fluff pulp)

Fiber basis weight = 35-40 g/m<sup>2</sup> (col. 5, lines 7-16, conventional fluff pulp basis weight)

$$\frac{\text{SAP basis weight}}{\text{Fiber basis weight}} = \frac{20 - 100 \text{ g/m}^2}{35 - 40 \text{ g/m}^2} = 0.5 - 2.86,$$

which overlaps the claimed range of 50 wt% or more of the super absorbent polymer.

14. Regarding claim 6, Ito discloses an absorbent article in which the sheet absorbers having multiple layers are provided in the bags (Figs. 4-7, first and second absorbing layers 6 and 7 placed in ends of liquid-impermeable sheet 5).

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**Deleted:** Claim 4 (as well as 5, 6, 11-14 ) lacks antecedent basis, since claim 1 refers to only one absorber, which is how you can make the Ito rejection. I'd reject cl 4 under 112, 2<sup>nd</sup> for LAB and treat all the claims as if there's only one absorber that extends to be within both bags.

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15. Regarding claim 9, Ito discloses an absorbent article in which a ratio of an average left-to-right length W to an average front-to-rear length L is 0.5 or more (col. 6, lines 45-46, sample size of 300 x 400 mm,  $W / L = 300/400 = 0.75$ , greater than claimed ratio of 0.5).

16. Regarding claims 11 and 12, Ito discloses an absorbent article further including a guide sheet bridging the absorbers provided in each of the two bags (col. 3, lines 24-30, Fig. 10, rayon staple layer 11);

in which the guide sheet allows transfer of a body fluid between the absorbers provided in each of the two bags (Fig. 10, rayon staple layer 11 comprising rayon and extending along second absorbing layer 7, therefore capable of transferring body fluid).

17. Regarding claims 13 and 14, Ito discloses an absorbent article in which the guide sheet extends to cover a part of each of the absorbers (Fig. 10, rayon staple layer 11 covering second absorbing layer 7). Examiner interprets the language "...extends to cover a part or entire lower surface of each of the absorbers..." and "...extends to further cover a part or entire side surface of each of the absorbers..." broadly, to include "...in which the guide sheet extends to cover a part of each of the absorbers."

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18. Regarding claim 18, Ito discloses an absorbent article further including a skin contact sheet at least between the two bags of the leak preventer (col. 3, lines 55-61, Figs. 8-10, porous surface sheet 8 between open ends of liquid-impermeable sheet 5);



***Claim Rejections - 35 USC § 103***

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19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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20. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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21. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US Patent 4,364,992) in view of Sorebo et al (US Patent Application Publication No. 2003/0089633).

22. Regarding claim 8, Ito discloses the invention as substantially claimed, see above. However, Ito is silent regarding the area of the sheet where the two bags are not provided as claimed [claim 8]. Sorebo discloses an interlabial pad comprising a bag (¶ [0026], Fig. 1, fluid impervious layer 7), further comprising an area of a package where two bags are not provided occupying 50% or less of an area of the entirety of the package in the leak preventer (Fig. 15, area not covered by pockets 83, 85 substantially less than 50% of area covered by pockets 83, 85 as depicted). Sorebo provides the

advantage of providing a minimal area for debris to enter, restricting entry of any contamination. In other words, Sorebo limits the area where contaminants could enter during storage. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito as discussed with the relative area as taught by Sorebo in order to maintain an absorbent article in a clean state.

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24. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US Patent 4,364,992) in view of Raley (US Patent 4,846,813).

25. Regarding claims 15-17, Ito discloses the invention as substantially claimed, see above. However, Ito lacks a guide sheet as claimed [claims 15-17]. Raley discloses an absorbent article (col. 4, lines 17-31, 35-40, Figs. 1-3) further comprising:

a guide sheet including a concavity-and-convexity-containing sheet member having apertures forming flow paths (col. 5, lines 6-13, col. 6, lines 22-27, Figs. 1-2, topsheet 13 having passages 14);

a guide sheet further including a hydrophilic diffusion sheet laminated under or combined to a lower surface of the concavity-and-convexity-containing sheet member (col. 5, lines 6-13, Figs. 1-2, absorbent / fibrous web 12 bonded to topsheet 13);

a guide sheet further including a body fluid impermeable sheet laminated under or combined to a lower surface of the hydrophilic diffusion sheet (col. 6, lines 32-37, col. 8, lines 20-22, claim 2, Figs. 1-2, backsheet 11 bonded to fibrous web 12).

Raley provides the advantage of preventing flow-back of liquids previously absorbed within an absorbent web (cols. 1-2, lines 15-18, 64-10). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito as discussed with the guide sheet as taught by Raley in order to prevent flow-back of absorbed liquids.

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26. Claims 21, 23, 25 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US Patent 4,364,992) in view of Finch et al. (US Patent 5,954,201).

27. Regarding claims 21, 23 and 25, Ito discloses the invention as substantially claimed, see above. However, Ito lacks a fitting member as claimed [claims 21, 23 and 25]. Finch discloses an absorbent article such as a sanitary napkin (col. 3, lines 26-39, Figs. 1-3, absorbent article 10), further comprising:

a fitting member for fitting an absorbent article to a body surface of a wearer between two bags of a leak preventer (col. 4, lines 28-40, especially lines 28-30, Figs. 1-2, attachment device 50 extending on region between peripheral seal 18 of cover 12);

the fitting member provided under a lower side of a sheet of a leak preventer (Fig. 2, attachment device 50 provided under lower side of cover 12);

in which a front-to-rear length of the fitting member is longer than a front-to-rear length of the leak preventer (Fig. 2, attachment device 50 longer than absorbent 16).

Finch provides the advantage of attaching an absorbent article to a user's undergarment to maintain its position during use. Therefore, it would have been obvious

to one of ordinary skill in the art at the time the invention was made to modify the invention of Ito as discussed with the fitting member as taught by Finch in order to maintain an absorbent article in a correct position during use.

28. Regarding claim 31, Ito in view of Finch discloses an absorbent article having the claimed structural elements. Examiner interprets the language “feces-receiving portion” as functional language, since no additional structure is being added to the invention. To clarify, the invention of Ito in view of Finch is capable of receiving feces on a portion of the article.

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29. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US Patent 4,364,992) in view of Finch et al. (US Patent 5,954,201), further in view of Visscher et al.(US Patent 5,674,214).

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30. Regarding claim 22, Ito in view of Finch discloses the invention as substantially claimed, see above. However, Ito in view of Finch lacks a fitting member provided on an upper side of the sheet of a leak preventer as claimed [claim 22]. Visscher discloses an absorbent article such as a sanitary napkin comprising a leak preventer (col. 2, lines 50-64, col. 5, lines 25-40 especially lines 32-36, Figs. 1, 4 sanitary napkin comprising backsheet 30), further comprising a fitting member provided on an upper side of the sheet of a leak preventer (col. 5, lines 32-36, Figs. 1, 4, spacing structure 44 provided on upper side of backsheet 30). Visscher provides the advantage of improved contact with a wearer's body (col. 10, lines 9-30, especially lines 9-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

modify the invention of Ito in view of Finch as discussed with the fitting member as taught by Visscher in order to improve contact with a wearer's body.

### ***Conclusion***

31 The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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|----------------------------|------------|
| ❖ Nakanishi; Minoru et al. | US 4842595 |
| ❖ Hamajima; Mitsugu et al. | US 5496626 |
| ❖ Hamajima; Mitsugu et al. | US 5629069 |
| ❖ Malfitano; Amanda        | US 4666440 |

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Marcetich whose telephone number is (571)272-2590. The examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Adam Marcetich/  
Examiner, Art Unit 3761

//Leslie R. Deak//  
Primary Examiner, Art Unit 3761